IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs February 27, 2008

STATE OF TENNESSEE v. TIMOTHY LARON LATTIMORE

Direct Appeal from the Circuit Court for Blount County
No. C-15031 D. Kelly Thomas, Jr., Judge

No. E2007-00204-CCA-R3-CD - Filed March 26, 2008

A Blount County jury found the Defendant, Timothy Laron Lattimore, guilty of one count of second degree murder, one count of attempted second degree murder, one count of attempted first degree murder, one count of especially aggravated kidnapping, and one count of aggravated kidnapping. The trial court sentenced him to an effective sentence of forty years. The Defendant appeals on the ground that the jury improperly rejected his insanity defense. Finding no error, we affirm the trial court's judgment.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court Affirmed

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which JERRY L. SMITH and ALAN E. GLENN, JJ., joined.

Kevin W. Shepherd, Maryville, Tennessee, for the Appellant, Timothy Laron Lattimore.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; Renee W. Turner, Assistant Attorney General; Michael Flynn, District Attorney General; Tammy Harrington, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION
I. Facts

A Blount County Grand Jury indicted the Defendant on one count of first degree premeditated murder, one count of attempted second degree murder, one count of aggravated assault, one count of attempted first degree premeditated murder, one count of especially aggravated kidnapping, and one count of aggravated kidnapping. At his trial, the following evidence, viewed in the light most favorable to the State, was presented: Rachel Ann Dean raised the Defendant, her grandson, from when he was three months old until he was eleven years old. Around the age of eleven, the Defendant became "unruly." He "[said] bad words [and threw] rocks at [his great-

grandmother's] house." Therefore, he moved to New York City to live with his mother, Ms. Dean's oldest daughter. While in New York City, the Defendant was hospitalized for three weeks between December 2001 and January 2002. He was diagnosed and treated for schizophrenia. At some point after his release, the Defendant called his friend, Gregory McCallie, to come to New York City and rescue him from the people "trying to kill [him]." McCallie arrived in New York and drove the Defendant to North Carolina, where the Defendant lived in a motel with McCallie and McCallie's girlfriend. McCallie testified that, while they were in the motel, the Defendant would stare at the wall for long periods of time and "talk nonsense." In December 2002, the Defendant was hospitalized in North Carolina for two weeks for treatment of his schizophrenia.

The Defendant returned to Tennessee in 2003, approximately six months before the shooting. Because he had no steady job, he relied on his family for support and lived with various relatives for short stints of time. The Defendant was often passed from one household to another because he did not bathe regularly. According to several family members, the Defendant often referred to his wife and baby, neither of whom the family was sure actually existed; the Defendant also frequently discussed the CIA, the FBI, and the White House. When the family members told him to quit talking about these subjects, the Defendant complied. Sarah Wimbley, one of the Defendant's aunts, testified that, when the Defendant stayed with her, he only slept on the floor and not in a bed.

On October 16, 2003, the Defendant joined other family members to help his grandmother, Ms. Dean, and his stepgrandfather, Mr. Dean, move houses. Also helping were Ricky Benton, a cousin visiting from Ohio; Sarah Wimbley; and Ryan Wimbley, one of the Defendant's uncles.[1] Ms. Dean described everyone as "having fun. Laughing and talking and eating and just having fun." She attributed this light-heartedness to the family getting along well, in part, because it was her birthday. As a group, they first moved the bedroom furniture. While deconstructing the beds, they found a plastic garbage bag under one of the beds containing a shotgun, broken down, and a handgun with its matching magazine. The magazine was separate from the handgun. Ms. Dean said someone just "took the garbage bag and just threw it in the other bedroom [on] the floor." The guns belonged to a friend who stayed with the family a few months prior. After the family dropped off one load of furniture at the new house, they returned to the old house and rested a bit before loading up more furniture. Ms. Dean said she, Sarah, and Mr. Dean were inside the house when they heard "something like pow." Ms. Dean said she thought it was a firecracker, but as Sarah went to the door, Ms. Dean heard her say, "Oh, L, what have you done?" referring to the Defendant.[2] At that point, Ms. Dean saw Ryan lying on the ground and bleeding from his head.

Barry Haas, a neighbor of the Dean family, stated that after shooting Ryan, the Defendant, "turn[ed] and r[a]n and jump[ed] in a van that was parked on the side road next to the Deans. . . .

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[1] Because two of the individuals share a surname, we will refer to them by their respective first names. We mean no disrespect.

[2] The Defendant's nickname was "L," because he "wanted to be like L Cartel from the movie *Scarface*," according to Sarah Wimbley.

He drove the van about two feet, slammed it up in park, . . . and jumped back out." At that point, the Defendant ran towards the house, and he made Ms. Dean, Mr. Dean, and Sarah enter the house. Ms. Dean said she tried to call 911, but "[the Defendant] came through the door with the gun, and he told me to drop the telephone. I hung up the telephone -- But he had reached back and locked the front door and that's when he told me and Sarah to sit down on the couch." The Defendant told Mr. Dean, "[I]t's not for you," while waving the gun in his face and forcing him to exit the house via the back door. At that point, the Defendant had Ms. Dean and Sarah sit on the couch in the living room while he paced. While the Defendant paced, he waved the gun and "talk[ed] nonsense" about his nonexistent wife and baby.

Outside of the house, the police arrived and found Ryan bleeding in the driveway. An ambulance took Ryan to the hospital for treatment, and he later died from the wounds inflicted by the shooting. Dr. Darinka Mileusnic-Polchan, the medical examiner who performed the autopsy on Ryan's body, testified that he was shot in his left eye. She stated that the bullet went through the left eye, into the brain, and stayed lodged in the head. Gunpowder burns indicated that Ryan was shot from a distance of two to three feet.

After the ambulence drove Ryan to the hospital, the SWAT team and a hostage negotiator arrived at the house. The hostage negotiator attempted to get the Defendant to communicate with her, and she even tried impersonating his "wife." The Defendant recognized that she was not his wife. In total, the Defendant held Ms. Dean and Sarah hostage for three to four hours. While holding them hostage, the Defendant discussed Osama bin Laden, his wife, and his baby. He also drank several beers and smoked cigarettes, and he dismantled the alarm system by pulling it out of the wall. When Ms. Dean needed to use the restroom, he refused her request, and instead forced her to urinate on the couch. He told her, "Rachel Ann, this will be one of your most embarrassing moments," referring to her by her first name, as opposed to "Grandma," the title by which he normally called her. After several hours, the police cut the power, so they could place a "throw phone" in the house.[3] When the power was cut, the Defendant became more agitated, but he continued to talk to the hostage negotiator on the landline phone, and he put down the gun. Seeing that the Defendant relinquished the gun, Sarah picked up a nearby lamp and lunged towards the Defendant. In reaction to her movement, he shot her three times: in her hand, in her shoulder, and in her head. He was within three feet of her when he shot her. Sarah testified, "All I remember was three shots. And I was on the floor. On the floor-- I had my eyes closed – I saw the shot -- I saw the flash of the gun -- of the shots." She said she did not remember much after that.

After the Defendant shot Sarah, Ms. Dean pushed the coffee table into him, in an attempt to knock him to the ground. He did not fall, but instead, hit her in the head, throwing her to the ground, and, as she was on her hands and knees, he put the gun in her face and pulled the trigger. The gun did not fire a round, but instead just "clicked." In response to hearing the shots, the SWAT team

[3] According to Gail Anderson, the hostage negotiator, a throw phone is a phone specifically used for negotiations, where although the hostage-taker thinks he has hung up on the negotiator, the phone line remains open, allowing the negotiator to hear all noise and discourse happening inside the building where the hostages are kept.

broke down the front door with a battering ram and entered the house. As the team rushed into the house, the Defendant said, "They done it, they done it," referring to his grandmother and aunt. While being arrested, he repeated that he "didn't do it."

Ms. Dean testified that the Defendant "knew what he was doing." She said that something is "wrong" with him but that he was pretending to be crazy. Sarah testified, "To me, he's an actor," who acted the way he did "just to get attention."

After being taken into custody, the Defendant was "docile" and well-mannered, as described by the police. The Defendant even consented to giving a blood sample. To ensure that the Defendant was mentally competent to stand trial, he was evaluated at Lakeshore Mental Health Institute for a month. While there, the doctors diagnosed him with and treated him for paranoid schizophrenia. At trial, Dr. Harned, one of the psychiatrists treating the Defendant, testified that the Defendant did not appreciate the wrongfulness of his actions on October 16, 2003. When describing why the Defendant tried fleeing after shooting Ryan and why he told the police that Ms. Dean and Sarah "done it," Dr. Harned said the Defendant was exhibiting nothing more than a "primal" fear-based response.

Dr. Brown, a clinical and forensic psychologist, testified that she diagnosed the Defendant with disorganized schizophrenia, and she thought he could appreciate the wrongfulness of his actions on October 16, 2003. Dr. Brown based this conclusion on three of the Defendant's general actions: hiding, excusing, and running away. Dr. Brown said the Defendant hid the gun in his pants pocket, and he hid the hostages behind a locked door. She said he excused certain people, like Mr. Dean, from the house, when taking hostages, and he immediately told the police that other people did "it." She said the Defendant exhibited running away actions when he got into the van and drove it, albeit a short distance, after shooting his uncle.

After hearing the evidence, the jury convicted the Defendant of one count of second degree murder, one count of attempted second degree murder, one count of attempted first degree murder, one count of especially aggravated kidnapping, and one count of aggravated kidnapping. The trial court sentenced him to forty years in prison. It is from this judgment that the Defendant now appeals.

II. Analysis

On appeal, the Defendant raises the issue that the jury erred by rejecting his insanity defense. In support, he cites that three experts testified on his behalf stating that he was mentally ill at the time of the shooting.[4] In opposition, the State argues that the Defendant's showing fails to meet the rigorous standard required for a reversal and a finding of insanity, citing *State v. Flake*, 88 S.W.3d 540, 554 (Tenn. 2002).

[4] The three experts referred to are Dr. Harned and Dr. Murray, the Defendant's witnesses, and Dr. Brown, the State's witness.

In Tennessee, "it is an affirmative defense to prosecution that, at the time of the commission of the acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature or wrongfulness of such defendant's acts." T.C.A. § 39-11-501 (2003). Moreover, "Mental disease or defect does not otherwise constitute a defense" and "[t]he defendant has the burden of proving the defense of insanity by clear and convincing evidence." *Id*. The standard for reviewing a jury's verdict with respect to an insanity defense is quite rigorous:

> [A]ppellate courts in Tennessee should reverse a jury verdict rejecting the insanity defense only if, considering the evidence in the light most favorable to the prosecution, no reasonable trier of fact could have failed to find that the defendant's insanity at the time of the offense was established by clear and convincing evidence.

Flake, 88 S.W.3d 540.

In this case, the experts agreed that the Defendant suffered from schizophrenia on October 16, 2003. However, this alone is not legally sufficient to constitute a defense. The Defendant must prove that he could not appreciate the nature or the wrongfulness of his actions, regardless of any mental disease he may have. A reasonable trier of fact could have found that the Defendant did appreciate the nature and wrongfulness of his actions; therefore, he did not prove his insanity defense by clear and convincing evidence. First, the Defendant's own grandmother, who raised him from age three months to eleven years old, testified that she thought he knew what he was doing when he shot Ryan Wimbley and when he held her hostage at gunpoint. The Defendant's aunt, Sarah Wimbley, who was also one of his hostages, opined that the Defendant was just putting on "an act." Dr. Harned, a defense witness and a psychiatrist, admitted that his team of mental health professionals initially doubted whether the Defendant was malingering or if he truly suffered from schizophrenia. Dr. Brown, a clinical and forensic psychologist, testified that in her professional opinion, the Defendant did suffer from schizophrenia. She stated that he was in a psychotic state while he committed the acts at issue, but he understood what he was doing and knew it was wrong. She supported this opinion by emphasizing the facts that the Defendant hid the weapon and hid the hostages in a locked house. The Defendant also excused certain people from the dangerous situation, and, he excused himself from culpability by blaming the shootings on his grandmother and aunt. Additionally, he tried fleeing from the scene by getting into the van and driving it, albeit a short distance. When these facts are taken together, a reasonable jury could have found the Defendant did not meet his burden of proving the insanity defense by clear and convincing evidence. As such, the Defendant is not entitled to relief on this issue.

III. Conclusion

We conclude that the Defendant failed to prove that the jury erred by rejecting his insanity defense. Based on the foregoing reasoning and authorities, we affirm the judgments of the trial court.

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ROBERT W. WEDEMEYER, JUDGE